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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BARTELL RANCH LLC, et al.,

Plaintiffs,

)
)
)
)

Case No.: 3:21-cv-80-MMD-CLB
(LEAD CASE)

1 v.)
 2)
 3 ESTER M. MCCULLOUGH, et al.,)
 4)
 5 Defendants,)
 6 and)
 7)
 8 LITHIUM NEVADA CORPORATION,)
 9)
 10 Intervenor-Defendant.)
 11 _____)
 12)

**TRIBAL PLAINTIFFS’
 FIRST MOTION TO EXTEND
 TIME TO REVIEW
 NEWLY-SUPPLEMENTED
 ADMINISTRATIVE RECORD
 AND SUBMIT OPENING
 SUMMARY JUDGMENT
 MOTIONS**

13 WESTERN WATERSHEDS PROJECT, et al.,)
 14)
 15 Plaintiffs,)
 16)
 17 RENO SPARKS INDIAN COLONY, et al.,)
 18)
 19 Intervenor-Plaintiffs,)
 20)
 21 and)
 22)
 23 BURNS PAIUTE TRIBE,)
 24)
 25 Intervenor-Plaintiff.)
 26)

Case No.: 3:21-cv-103-MMD-CLB
 (CONSOLIDATED CASE)

27 v.)
 28)
 29 UNITED STATES DEPARTMENT OF THE)
 30 INTERIOR, et al.,)
 31)
 32 Defendants,)
 33 and)
 34)
 35 LITHIUM NEVADA CORPORATION,)
 36)
 37 Intervenor-Defendant.)
 38 _____)

39 The Burns Paiute Tribe (“BPT”) and Reno-Sparks Indian Colony (“RSIC”)
 40 (together “Tribal Plaintiffs”) submit their First Motion to Extend Time for filing
 41 opening motions for summary judgment. For the reasons set forth below, Tribal
 42 Plaintiffs respectfully request an additional 60-days to review the revised

1 administrative record and to file any objections and, then, 30-days to file their
2 opening briefs once any new objections have been resolved by this Court or if no
3 objections are filed. Parties to this case have attempted to reach an agreement
4 on adjustment of the schedule, but have been unable to reach an agreement.

5 On November 24, 2021, the Court ordered: “If the Court grants all or part
6 of the motions to complete the administrative record, the parties agree that
7 opening motions for summary judgment shall be filed within 30 days of Federal
8 Defendants lodging of the new administrative record with the Court and all
9 parties.”

10 On February 11, 2022, Defendant Bureau of Land Management (“BLM”)
11 mailed new thumb drives, pursuant to the Court’s December 27, 2021 Order,
12 ECF No. 155, containing “any materials previously withheld as deliberative” and
13 “any documents still withheld as deliberative when Defendants supplement the
14 AR in a privilege log.” *Id.* at 5-6.

15 RSIC’s co-counsel Will Falk received his thumb drive on Tuesday,
16 February 15, 2022. BPT’s counsel Rick Eichstaedt received his thumb drive on
17 Wednesday, February 16. As of the time of filing this Motion, RSIC’s co-counsel
18 Terry Lodge has still not received his thumb drive.

19 The “new” administrative record contained a staggering amount of new
20 documents – BLM added over 30,000 new pages to the EIS Decision File (which
21 nearly doubled the the EIS Decision File), over 2,000 new pages in the NHPA
22 Decision File (which more than doubled the NHPA Decision File), and added

1 nearly 9,000 new pages to the privilege log. Given the volume of this new
2 documentation, Tribal Plaintiffs need an additional 60-days from the date this
3 Motion is filed (February 25, 2022) to review the nearly 40,000 new pages
4 supplementing the administrative record. Then, if no new motion practice is
5 needed, Tribal Plaintiffs need 30-days to file their opening summary judgment
6 motions or 30-days from the date this Court resolves any new record disputes.

7 Reviewing the nearly 40,000 is no easy task. Attorneys need to review
8 each of the documents, including the privilege log, to determine what documents
9 may be missing while coordinating with Tribal staff and leadership. Given the
10 nature of the case (consultation and coordination with Tribes), close coordination
11 with Tribal officials is essential.

12 Tribal Plaintiffs are sensitive to the Court's aspiration to rule on the merits
13 before the 2022 construction season. The Court has stated that it seeks to
14 resolve this case on the merits before the 2022 construction season begins. It
15 relied on this aspiration to limit what it would consider as irreparable harm to
16 carrying out the HPTP in denying the Tribes' motion for preliminary injunction
17 (ECF 92-20). It relied on this aspiration to deny RSIC's motion for leave to amend
18 its complaint (ECF 167-5). It ordered BLM to produce materials previously
19 withheld as deliberative and to supplement the AR with a privilege log within 30-
20 days because "the Court hopes to resolve this case on the merits before the
21 2022 construction season begins..." (ECF 155-6.)

1 Given the volume of the new documents provided to the parties, Tribal
2 Plaintiffs respectfully submit that ruling on the merits before the start of
3 construction season is likely no longer possible in a manner that is fair to the
4 parties.

5 Assuming that construction season begins in April or May, BLM's doubling
6 of the administrative record has made a merits ruling by April or May virtually
7 impossible. BLM's attempts to withhold so much documentation suggests that
8 there may be items in the supplemented record that prove BLM's violations of the
9 permitting process.

10 The current schedule to rule on the merits before construction season
11 without an opportunity to fully review the record would prejudice the Tribal
12 Plaintiffs. At the heart of the Tribal Plaintiffs' claims is that BLM arbitrarily and
13 capriciously rushed this Project through the permitting process, *precisely to limit*
14 *Tribal, public, and judicial review of the Project.*

15 BLM appears to be banking on the Court's intention to issue a spring 2022
16 dispositive ruling to make it extremely difficult for the parties to absorb the
17 supplemental items in the record. BLM withheld nearly 40,000 pages of
18 documents and allowed the parties to negotiate a schedule for summary
19 judgment briefing that made summary judgment motions due 30 days after BLM
20 lodged those new 40,000 pages. BLM likely hoped that the Court's aspiration to
21 rule on the merits would either force the parties to adhere to their original
22 schedule or that this Court would limit the time the Plaintiffs would get to review

1 the new documents. From the Tribes' perspective, rushing to the merits, at this
2 point, restricts the Tribes' ability to challenge BLM's consultation violations. It
3 favors BLM and Lithium Nevada and prejudices the Tribes.

4 The parties were afforded more than 30-days by the Court to review the
5 previous version of the record (which was nearly half the size). It is not
6 reasonable to assume that the parties can review around 40,000 pages of new
7 documents, assemble record objections, and file them in the next 30-days.
8 Moreover, it was no fault of Tribal Plaintiffs that such an enormous new record
9 was filed – this falls entirely on the BLM. Had Tribal Plaintiffs anticipated such a
10 volume of new documents, they would not have agreed to the previous schedule.
11 Accordingly, it is imperative for the Court to grant an extension of time to review
12 the new items and to entertain the potential for more motion practice on the
13 administrative record.

14 For these reasons, Tribal Plaintiffs respectfully request 60-days from the
15 date this Motion is filed to review the supplemented administrative record and 30-
16 days to file opening briefs once record disputes are resolved, if necessary.

17
18 Respectfully submitted,

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30 Attorneys for the Burns Paiute Tribe
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32 **CERTIFICATE OF SERVICE**

33 I hereby certify that on Friday, February 25, 2022, I filed the foregoing using the
34 United States District Court CM/ECF, which caused all counsel of record to be served
35 electronically.

36 /s/Will Falk
37 Utah Bar No. 16678
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